

STATE OF MICHIGAN
COURT OF APPEALS

NORTH OXFORD STOR-N-LOCK, LLC,

Petitioner-Appellant,

v

TOWNSHIP OF OXFORD,

Respondent-Appellee.

UNPUBLISHED

August 30, 2007

No. 268658

Tax Tribunal

LC No. 00-308705

Before: White, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's determination of the assessed value of commercial property in Oxford Township for purposes of ad valorem taxation for the 2004 tax year under the General Property Tax Act (GPTA), MCL 211.1 *et seq.* We affirm.

Petitioner owns an 18.65-acre parcel of land, upon which it has constructed four warehouses used for self-storage rental facilities. The fourth building was constructed in 2003. Petitioner received a notice of the 2004 tax assessment for the property that enumerated the taxable value (TV) at \$501,810, the assessed value (AV) at \$588,450, and the state equalized value (SEV) at \$588,450. Petitioner appealed the assessment to the Oxford Township board of review, and the board did not adjust the values. Petitioner then appealed to the Michigan Tax Tribunal. Pursuant to 1999 AC, R 205.1305(1), a formal transcript of the hearing was not taken because it was a small claims division proceeding. The tribunal found no basis for a change in the assessment.

Petitioner argues that the tax tribunal applied wrong principles when it used the sales-comparison or market approach rather than cost-less-depreciation approach to value an addition constructed in 2003. We disagree. In reviewing Michigan Tax Tribunal decisions, this Court is limited to allegations of fraud, error of law, or adoption of a wrong principle. *Wayne Co v State Tax Comm*, 261 Mich App 174, 186; 682 NW2d 100 (2004) (citations omitted). "All factual findings are final if supported by competent, material, and substantial evidence." *Id.* Substantial evidence may be considerably less than a preponderance of the evidence. *Id.* at 186-187.

The Michigan Constitution provides that real and tangible personal property is assessed at no more than 50 percent of its true cash value (TCV). Const 1963, art 9, § 3, as amended by Proposal A; MCL 211.27a(1); *Kok v Cascade Twp*, 255 Mich App 535, 539-540; 660 NW2d 389 (2003), after remand 265 Mich App 413; 695 NW2d 545 (2005). In addition, until the property is transferred, its TV is limited to the property's TV in the preceding year minus any losses, plus

the lesser of five percent or the inflation rate, plus all additions. Const 1963, art 9, § 3, as amended by Proposal A; MCL 211.27a(2)(a). When the property is transferred, the property is assessed at its current TCV, adjusted to achieve uniform taxation at a state level, which is the SEV. *WPW Acquisition Co v Troy*, 250 Mich App 287, 300-301; 646 NW2d 487 (2002). Additions include new construction and omitted property, which is property that existed but was not included in the assessment. *Kok, supra* at 540-541.

True cash value means fair market value, or the usual price for which the property would sell. MCL 211.27(1); *Wayne Co, supra* at 200-201. The three methods typically used to determine TCV are the cost-less-depreciation approach, the sales-comparison or market approach, and the capitalization-of-income approach, and variations of these methods may be used. *Wayne Co, supra*. “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.” *Id.* at 201. For the cost-less-depreciation approach, the estimated land value is added to the estimated cost of reproducing or replacing improvements, and then the loss in value from depreciation is subtracted. *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485 n 18; 473 NW2d 636 (1991). The sales-comparison approach compares recent sales of similar properties to the property at issue and makes adjustments for differences in factors such as size, age, condition, and location. *Id.* at 485 n 19. The income-capitalization approach uses a capitalization rate to convert the estimated future benefits of owning the property into a present lump-sum value. *Id.* at 485 n 20.

In this case, the TV for the property in the preceding year was \$356,760. The tribunal added the inflationary factor of 2.3 percent of the TV, which was \$8,200, to that value and then added the TCV of the additions. Petitioner disputes the assessment of the TCV of the building it constructed in 2003. The Administrative Law Judge (ALJ) determined that the market approach would be the best indicator of the property’s TCV and considered petitioner’s cost for the building, the assessor’s findings, and respondent’s market analysis. The ALJ ultimately found the assessor’s calculations the most accurate measurement of TCV. Respondent’s appraiser, Lauren K. Greer, testified that the assessor based the TCV of the building, \$196,213, upon what the addition added to the overall market value of the property.

Petitioner has not met its burden of proof to establish the true cash value of the property. *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994). The construction cost is not a determination of TCV. *Kok v Cascade Twp (After Remand)*, 265 Mich App 413, 418; 695 NW2d 545 (2005). In fact, petitioner conceded that it would not sell the property for the appraised value, which assessed the building in question at a slightly higher value of \$199,781. Therefore, petitioner’s argument that \$196,213 does not represent the TCV, or the fair market value, of the building is without merit.

Next, petitioner contends that the tribunal improperly considered evidence that three concrete slabs and 1,500 square feet of a storage building were constructed in 2003 because no written evidence of these additions was submitted at least 14 days prior to the hearing. We disagree. 1999 AC, R 205.1342(2) provides:

A copy of a valuation disclosure or other written evidence to be offered in support of a party’s contentions as to the subject property’s value shall be filed with the tribunal and served upon the opposing party not less than 14 days before the date

of the scheduled hearing. Failure to comply with this subrule may result in the exclusion of the evidence at the time of the hearing because the opposing party may have been denied the opportunity to adequately consider and evaluate the evidence before the date of the scheduled hearing.

Under this administrative rule, the tribunal has discretion to exclude untimely evidence. *Kok, supra* at 544. The tribunal also has discretion to consider any evidence “of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.” 1999 AC, R 205.1342(1).

At the hearing, Greer testified that the assessor determined the 2004 TV by adding the inflationary increase of 2.3 percent of the 2003 TV and the TCV of the additions, which was based upon what the additions added to the overall market value of the property. The TCV of the new building was \$196,213, the TCV for an additional 1,500 square feet that was added to the back of an existing building was \$39,917, and the TCV of concrete slabs installed for future buildings was \$37,570. The ALJ found that the initial assessment figures were a more accurate indication of TCV than the market analysis because overall market sales decreased from 2004 to 2005. Therefore, the ALJ started with the 2003 TV of \$356,760, added \$8,200 for inflation, and added 50 percent of the value of the additions, \$136,850, for a total TV of \$501,810, as originally assessed. For the 2005 tax year, the ALJ added only the inflationary factor of 2.3 percent to the 2004 TV for a total of \$513,350.

There is no written evidence in the lower court record regarding the addition to the building and the concrete slabs, other than a general diagram in the cost analysis of the buildings that included the 1,500 square foot additional section. However, because the 2004 TV was at issue in the proceeding, and the TCV of these additions was used in the calculation of the TV, testimony regarding the additions was not only relevant, but necessary. Respondent relied upon the assessor’s observations and analysis in presenting its testimony. The rule allows the tribunal to exclude this evidence but does not require it to do so. *Kok, supra* at 544. Finally, petitioner’s argument that these additions were constructed in 2002 is irrelevant if the values were never included in a previous assessment because they would be considered omitted property. *Id.* at 540-541. The tribunal did not err in considering evidence regarding these additions.

Affirmed.

/s/ Helene N. White
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood